



April 24, 2001

Ms. Ruth H. Soucy  
Deputy General Counsel  
Open Government Section  
Comptroller Of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2001-1262A

Dear Ms. Soucy:

The Comptroller of Public Accounts (the “comptroller”) asks this office to examine Open Records Letter No. 2001-1262 (2001) because it believes that this office erroneously concluded that certain taxpayer information in its hearing decisions must be released. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

The comptroller received a request for (1) “[a]ll sales tax audit/refund settlement agreements reached by the Comptroller” during a specified time period, (2) [a]ll hearing decisions issued by the Comptroller” during a specified time period, and (3) all records relating to the general counsel’s use of state telephones. You stated that the requestor subsequently clarified his request. In response, you released to the requestor telephone billing records, a redacted list of administratively final decisions, a redacted list of administratively final sales tax cases, a redacted list of cases that resulted in refunds, and redacted copies of final decisions in the sales tax cases that resulted in refunds. Likewise, you released a redacted joint motion to dismiss and a redacted “Attachment A” together with the order on the joint motion to dismiss. You sought to withhold the redacted portions of the requested information under section 552.101 of the Government Code. In Open Records Letter No. 2001-1262, this office concluded that the comptroller must de-identify the requested decisions, including the accompanying joint motion to dismiss and attachment, but release the remainder of the information contained therein. We further concluded that the comptroller must de-identify the requested case lists and withhold information contained in the case lists relating to refund amounts. Because this office erred in applying the asserted exception to the joint motion to dismiss and attachment, we now re-examine the exception you claim with respect to the joint motion and attachment.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 111.006(a)(2) of the Tax Code provides that information “secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer’s books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer” is confidential. Although this office has determined that all supporting documents or other information provided to the comptroller by or on behalf of the taxpayer must be withheld from the public pursuant to section 111.006(a)(2) of the Tax Code, “private letter rulings” and administrative hearing decisions must be released to the public with the identity of the taxpayer redacted. We believe that the order on the joint motion to dismiss constitutes a comptroller decision and must therefore be released with only the identity of the taxpayer redacted. On the other hand, we do not believe that either the joint motion to dismiss or the attachment constitutes a “ruling” or “decision” of the comptroller that must be released with only the identity of the taxpayer redacted. Rather, because the joint motion was filed by both the taxpayer and the comptroller, the comptroller must not only redact the identity of the taxpayer but also withhold information contained in the joint motion that was “secured, derived, or obtained by the comptroller ... during the course of an examination of the taxpayer’s books, records, papers, officers, or employees.” Likewise, the comptroller must withhold from the attachment information “secured, derived, or obtained by the comptroller ... during the course of an examination of the taxpayer’s books, records, papers, officers, or employees.” The comptroller must also redact the identifying information of the taxpayer in the attachment because disclosure of this information would tend to identify the taxpayer in the accompanying decision. Consequently, we agree that all of the marked information contained in the joint motion and the attachment is confidential under section 111.006(a)(2) of the Tax Code and must therefore be withheld under section 552.101 of the Government Code. Open Records Letter No. 2001-1262 is overruled to the extent it conflicts with this current ruling.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

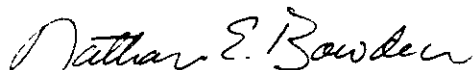
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/rr

Ref: ID# 145422

Encl: Submitted documents

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